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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,752	01/16/2002	John D. Puskas	065071-9052 US04	7521
7590 Jeffrey J. Hohenshell 710 Medtronic Parkway Minneapolis, MN 55432		03/08/2007	EXAMINER LAYNO, CARL HERNANDZ	
			ART UNIT 3766	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/08/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/051,752

Applicant(s)

JOHN D. PUSKAS

Examiner

Carl H. Layno

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-36, 38, 41 and 43-120 is/are allowed.
- 6) ☒ Claim(s) 37, 39, 40 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment, which was received by the Office on December 4, 2006.
2. Claims 1-120 are active and pending.

***Claim Rejections - 35 USC § 112***

3. In view of applicant's modifications to the claims, the Examiner is withdrawing the 35 U.S.C 112 rejections, which were made against claim 12 in the last Office action.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the electrode stimulation range in claim 42 of "between about five and about fifteen seconds" (lines 2-3) contradict the range stated previously in base claim 41, which recites a range of "between about fifteen seconds and about ninety seconds". The range mentioned in claim 42 should be a subset of that claimed in claim 41.

***Claim Rejections - 35 USC § 102***

6. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(e) rejection of Taylor et al (US 6,381,499), which was made against claims 41-44, 46, and 47 in the last Office action.

***Response to Arguments***

7. Applicant's arguments filed 12/4/2006 have been fully considered but they are not persuasive with respect to claims 37, 39, and 40.

The applicant argues that the Taylor et al reference does not disclose "a first electrode positioned on the neck of said patient in spaced apart relation to said first electrode" as specified in claim 37 since the clip electrodes illustrated by Taylor et al must be invasively attached to portions of the patient's neck to directly stimulate the vagus nerve.

The Examiner takes the position that the claim language "electrode [s] positioned on the neck of said patient" in its broadest sense encompasses both electrodes mounted on the exterior surface of the patient's neck as well as electrodes mounted invasively to portions within a patient's neck. The claim only requires that the electrodes be in "spaced apart relation" to one another and that they "create an electrical field effective to stimulate said vagus nerve to achieve controlled asystole". Clip electrodes #2 and #3 as shown in Fig.22 of the Taylor et al reference are attached to the left and right vagus nerves, respectively, to achieve this purpose.

***Allowable Subject Matter***

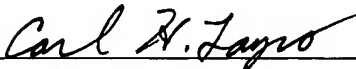
8. Claims 1-36, 38, 41, and 43-120 are allowed.

*Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO  
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3/4/2007